

IN THE COURT OF COMMON PLEAS OF BEDFORD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOHN DEERE CONSTRUCTION & FORESTRY Civil Action No.
COMPANY,

Plaintiff,

vs.

WAYNE ROY HALL, II,

Defendant.

COMPLAINT IN REPLEVIN

FILED ON BEHALF OF
Plaintiff(s)

COUNSEL OF RECORD OF THIS PARTY:

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PA ID #86514

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BERNSTEIN FILE NO. 659-025

IN THE COURT OF COMMON PLEAS OF BEDFORD COUNTY, PENNSYLVANIA
CIVIL DIVISION

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COMPANY,

Plaintiff,

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NOTICE AND COMPLAINT

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served upon you, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a Judgment may be entered against you by the Court, without further notice, for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE(S) SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Bedford County
Prothonotary
Bedford County Courthouse
Bedford, PA 15522
(814) 623-4833

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

COMPLAINT

1. Plaintiff, John Deere Construction & Forestry Company (“Plaintiff”), is a corporation with offices at 6400 NW 86th Street, Johnston, IA 50131-6600.

2. Defendant, Wayne Roy Hall, II (“Defendant”), is an adult individual receiving mail or conducting business at 323 Saint Pauls Church Road, Hopewell, Pennsylvania 16650-8005.

COUNT I-REPLEVIN AS TO ACCOUNT ENDING IN 2797

3. Plaintiff incorporates herein by reference thereto each of the preceding paragraphs of this Complaint in their entirety as if the same were more fully set forth herein.

4. On or about October 28, 2014, Plaintiff and Defendant entered into a Loan Contract and Security Agreement for the purchase of a 650K Crawler Dozer with serial number 1T0650KXLEE258749 (the “Dozer”) from Foster F. Wineland, Inc.

5. By the terms of said Loan Contract and Security Agreement, Defendant undertook to pay to Plaintiff the sum of \$119,917.80 in sixty (60) consecutive monthly payments of \$1,998.63 beginning December 1, 2014. A true and correct copy of said Loan Contract and Security Agreement for account ending in 2797 is attached hereto, marked Exhibit “1” and made a part hereof.

6. Plaintiff avers Defendant is in default of the Loan Contract and Security Agreement for account ending in 2797 by having not made payment to Plaintiff as promised, thereby rendering the entire balance immediately due and payable.

7. By the terms of said Loan Contract and Security Agreement, more specifically the “acceleration clause” therein, the Defendant’s default made the entire balance of payments immediately due and owing.

8. Plaintiff has performed all conditions precedent to the Defendant's duty to make the payments required under the Loan Contract and Security Agreement.

9. Plaintiff holds a security interest and is entitled to immediate possession of said Dozer, which Plaintiff holds a security interest in and any proceeds of the equipment, including insurance proceeds by virtue of Defendant's default.

10. As a result of Defendant's default, an unpaid principal balance in the amount of \$96,435.82 as of October 16, 2015, remains due and owing, as indicated by Plaintiff's Transaction History for account ending in 2797, a true and correct copy of which is attached hereto as Exhibit "2."

11. Plaintiff avers ongoing contractual interest at the rate of two-point-nine percent (2.9%) per annum on the unpaid principal balance from October 17, 2015 through May 24, 2017 which amounts to \$4,482.28.

12. Plaintiff avers that the Agreement provides for the addition of repossession expenses and costs of collection, including reasonable attorney's fees.

13. Plaintiff avers that its collection costs and attorney's fees are in an unliquidated amount as of May 24, 2017.

14. Plaintiff has performed all conditions precedent as holder of all right, title, and interest in the collateral, but Defendant wrongfully remains in possession of the vehicle at said address.

15. Plaintiff maintains a purchase money security interest in the collateral by virtue of its security agreement with Defendant.

16. By virtue of Defendant's default, Plaintiff has an immediate right to possession of the Dozer covered by the Security Agreement, the value of which is \$106,900.00 per Plaintiff's valuation of the Dozer included on Plaintiff's Equipment on Loan document, a true and correct copy of which is attached hereto as Exhibit "3," plus continuing interest at the aforesaid rate of two-point-nine percent (2.9%) per annum.

WHEREFORE, Plaintiff, John Deere Construction & Forestry Company prays for Judgment against Defendant, Wayne Roy Hall, II, in Count I of this Complaint in Replevin, as follows.

- A. For possession of the 650K Crawler Dozer with serial number 1T0650KXLEE258749, or in the alternative for damages of \$106,900.00 the value of the 650K Crawler Dozer, plus continuing interest at the aforesaid rate of two-point-nine percent (2.9%) per annum, in the event that recovery of the vehicle cannot be obtained;
- B. Reasonable attorneys' fees and expenses for retaking possession; and,
- C. For such other relief that the Court deems just and appropriate.

COUNT II – BREACH OF CONTRACT AS TO ACCOUNT ENDING IN 2797

17. Plaintiff incorporates herein by reference thereto each of the preceding paragraphs of this Complaint in their entirety as if the same were more fully set forth herein.

18. In the alternative to Count I, Plaintiff pleads an action for breach of contract, as a result of the Defendant's default, for the accelerated balance due under the parties Agreement in the amount of \$100,918.10, plus continuing interest at the aforesaid rate of two-point-nine percent (2.9%) per annum and late charges, on the principal balance due from May 24, 2017, attorneys' fees and costs.

19. Under the terms of the parties Agreement, Plaintiff is entitled to recover reasonable attorneys' fees and costs of retaking possession of the collateral.

WHEREFORE, Plaintiff, Plaintiff, John Deere Construction & Forestry Company prays for Judgment against Defendant, Wayne Roy Hall, II, in Count II of this Complaint in the amount of \$100,918.10, plus continuing interest at the aforesaid rate of two-point-nine percent (2.9%) per annum on the principal balance and late charges from May 24, 2017, reasonable attorneys' fees, expenses and costs.

COUNT III-REPLEVIN AS TO ACCOUNT ENDING IN 8022

20. Plaintiff incorporates herein by reference thereto each of the preceding paragraphs of this Complaint in their entirety as if the same were more fully set forth herein.

21. On or about June 4, 2012, Plaintiff and Defendant entered into a Loan Contract and Security Agreement for the purchase of a 310SJ Wheel Loader Backhoe with serial number 1T0310SJPA0187139 (the “Backhoe”) from Foster F. Wineland, Inc.

22. By the terms of said Loan Contract and Security Agreement, Defendant undertook to pay to Plaintiff the sum of \$81,452.16 in forty-eight (48) consecutive monthly payments of \$1,696.92 beginning July 10, 2012. A true and correct copy of said Loan Contract and Security Agreement for account ending in 8022 is attached hereto, marked Exhibit “4” and made a part hereof.

23. Plaintiff avers Defendant is in default of the Loan Contract and Security Agreement for account ending in 8022 by having not made payments to Plaintiff as promised, thereby rendering the entire balance immediately due and payable.

24. By the terms of said Loan Contract and Security Agreement, more specifically the “acceleration clause” therein, the Defendant’s default made the entire balance of payments immediately due and owing.

25. Plaintiff has performed all conditions precedent to the Defendant’s duty to make the payments required under the Loan Contract and Security Agreement.

26. Plaintiff holds a security interest and is entitled to immediate possession of said Backhoe, which Plaintiff holds a security interest in and any proceeds of the equipment, including insurance proceeds by virtue of Defendant’s default.

27. As a result of Defendant's default, an unpaid principal balance in the amount of \$16,964.22 as of October 21, 2015, remains due and owing, as indicated by Plaintiff's Transaction History for account ending in 8022, a true and correct copy of which is attached hereto as Exhibit "5."

28. Plaintiff avers ongoing contractual interest at the rate of four-point-nine percent (4.9%) per annum on the unpaid principal balance from October 22, 2015 through May 24, 2017 which amounts to \$1,299.86.

29. Plaintiff avers that the Agreement provides for the addition of repossession expenses and costs of collection, including reasonable attorney's fees.

30. Plaintiff avers that its collection costs and attorney's fees are in an unliquidated amount as of May 24, 2017.

31. Plaintiff has performed all conditions precedent as holder of all right, title, and interest in the collateral, but Defendant wrongfully remains in possession of the vehicle at said address.

32. Plaintiff maintains a purchase money security interest in the collateral by virtue of its security agreement with Defendant.

33. By virtue of Defendant's default, Plaintiff has an immediate right to possession of the Backhoe covered by the Security Agreement, the value of which is \$46,300.00 per Plaintiff's valuation of the Backhoe included on Plaintiff's Equipment on Loan document, a true and correct copy of which is attached hereto as Exhibit "3," plus continuing interest at the aforesaid rate of four-point-nine percent (4.9%) per annum.

WHEREFORE, Plaintiff, John Deere Construction & Forestry Company prays for Judgment against Defendant, Wayne Roy Hall, II, in Count III of this Complaint in Replevin, as follows.

- A. For possession of 310SJ Wheel Loader Backhoe with serial number 1T0310SJPA0187139, or
in the alternative for damages of \$46,300.00 the value of the 310SJ Wheel Loader Backhoe,

plus continuing interest at the aforesaid rate of four-point-nine percent (4.9%) per annum, in the event that recovery of the vehicle cannot be obtained;

- B. Reasonable attorneys' fees and expenses for retaking possession; and,
- C. For such other relief that the Court deems just and appropriate.

COUNT IV – BREACH OF CONTRACT AS TO ACCOUNT ENDING IN 8022

34. Plaintiff incorporates herein by reference thereto each of the preceding paragraphs of this Complaint in their entirety as if the same were more fully set forth herein.

35. In the alternative to Count III, Plaintiff pleads an action for breach of contract, as a result of the Defendant's default, for the accelerated balance due under the parties Agreement in the amount of \$18,264.08, plus continuing interest at the aforesaid rate of four-point-nine percent (4.9%) per annum and late charges, on the principal balance due from May 24, 2017, attorneys' fees and costs.

36. Under the terms of the parties Agreement, Plaintiff is entitled to recover reasonable attorneys' fees and costs of retaking possession of the collateral.

WHEREFORE, Plaintiff, John Deere Construction & Forestry Company prays for Judgment against Defendant, Wayne Roy Hall, II, in Count IV of this Complaint in the amount of \$18,264.08, plus continuing interest at the aforesaid rate of four-point-nine percent (4.9%) per annum on the principal balance and late charges from May 24, 2017, reasonable attorneys' fees, expenses and costs.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, Plaintiff, John Deere Construction & Forestry Company prays for Judgment against Defendant, Wayne Roy Hall, II, in Counts I-IV of this Complaint, for the following:

- A. For possession of the 650K Crawler Dozer with serial number 1T0650KXLEE258749, or in the alternative for damages of \$106,900.00 the value of the 650K Crawler Dozer, plus continuing interest at the aforesaid rate of two-point-nine percent (2.9%) per annum, in the event that recovery of the vehicle cannot be obtained;**
- B. For possession of 310SJ Wheel Loader Backhoe with serial number 1T0310SJPA0187139, or in the alternative for damages of \$46,300.00 the value of the 310SJ Wheel Loader Backhoe, plus continuing interest at the aforesaid rate of four-point-nine percent (4.9%) per annum, in the event that recovery of the vehicle cannot be obtained;**
- C. A Money Judgment in the total amount of \$119,182.18, plus continuing interest at the respective contractual rates on the principal balances from May 24, 2017;**
- D. Reasonable attorneys' fees and expenses for retaking possession; and,**
- E. For such other relief that the Court deems just and appropriate.**

BERNSTEIN-BURKLEY, P.C.

BY: _____
Arthur W. Zamosky, Esquire
PA ID #86514
Attorney for Plaintiff
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
412-456-8100
BERNSTEIN FILE NO. 659-025

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, and under penalty of perjury, that he is a Litigation Administrator for Deere Credit Services, Inc., servicing agent of John Deere Construction & Forestry Company, Plaintiff herein, that he is duly authorized to make this Verification and that the facts set forth in the foregoing COMPLAINT are true and correct to the best of his knowledge, information and belief.



Gregory L. Woodard
Litigation Administrator